Supreme Court, U.S.
FILED
FEB 18 1994
OFFICE OF THE CLERK

No. 93-1204

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

LARRY S. EAGLEYE,

Petitioner,

v.

TRW INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO THE PETITION

Of Counsel

JOHN W. CHIERICHELLA
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004
(202) 639-7000

SUSAN Z. HALLER
PATRICIA A. DUNN
(Counsel of Record)
JONES, DAY, REAVIS & POGUE
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

GERALD W. PALMER
JONES, DAY, REAVIS & POGUE
555 West Fifth Street
Suite 4600
Los Angeles, California 90013-1025
(213) 489-3939

Counsel for Respondent TRW Inc.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT	1
ARGUMENT	6
A. Petitioner's First Question Was Not Passed Upon By The Court Of Appeals.	6
B. Petitioner's Second Question Was Decided By The Court Of Appeals In Petitioner's Favor	7
C. Petitioner's Third Question Involves No Conflict Among The Circuits	8
CONCLUSION	10

TABLE OF AUTHORITIES

Page

Cases

Boddie v. American Broadcasting Co., 881 F.2d 267 (6th Cir. 1989), *cert. denied*, 493 U.S. 1028 (1990) 5

Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) 4, 9

Bradley v. Richmond School Board, 416 U.S. 696 (1974) 4, 9

J. Truett Payne Co. v. Chrysler Motors Corp., 451 U.S. 557 (1981) 7

United States v. Bekhrad, 672 F. Supp. 1529 (S.D. Iowa 1987) 8

United States v. Data Translation, Inc., 984 F.2d 1256 (1st Cir. 1992) 9

United States v. Hill, 676 F. Supp. 1158 (N.D. Fla. 1987) 8

United States v. Murphy, 937 F.2d 1032 (6th Cir. 1991) 5, 8

Statutes and Rules

31 U.S.C. § 3730(b)(4) (1982) 2, 7

Pub. L. No. 99-562, 100 Stat. 3154 (1986) 4

Pub. L. No. 100-700, 102 Stat. 4638 (1988) 4

Fed R. Civ. P. 54(b) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-1204

LARRY S. EAGLEYE,

Petitioner,

v.

TRW INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF IN OPPOSITION TO THE PETITION

STATEMENT

In 1984, as soon as a potential government contracting problem at the Compressor Components Division of TRW's Aircraft Components Group was suggested to the management of TRW Inc. ("TRW"),[1] TRW launched a comprehensive internal investigation, led by the TRW Law Department and supported by

---

[1] Pursuant to Rule 29.1, the Court is advised that TRW Inc. owns less than 100% interest in forty-five entities, of which only five are publicly held. Those five are as follows: Moresa, S.A. de C.V.; Representaciones C.V.D., S.A.; Sybase, Inc.; TRW do Brasil, S.A.; and United Insurance Company.

outside counsel, internal and external auditors, and financial, engineering and other personnel.

In November 1984, TRW voluntarily disclosed the initial results of its ongoing investigation to officials of the Department of Defense, the Department of Justice, the Defense Contract Audit Agency, and the Defense Logistics Agency. In February 1985, TRW presented to the government a follow-up report and continued to work with government personnel investigating the matter. The government began its own investigation and, as part of that activity, interviewed Petitioner Eagleye and other individuals. TRW ceased the practices involved, fired the perpetrators, including Petitioner Eagleye, and adopted a series of remedial measures.

Thus, long before Petitioner Eagleye ever filed his bounty-hunter lawsuits, TRW's responsibilities were being fulfilled by (1) TRW's own internal investigation; (2) TRW's prompt and voluntary disclosure of the results of that investigation; (3) TRW's voluntary adoption of remedial and disciplinary steps; and (4) TRW's expression of its willingness to make appropriate restitution and to cooperate fully with the government. Additionally, several government agencies had already begun civil and criminal investigations. All these events were old news by April 4, 1986, when the first *qui tam* complaint was filed by Petitioner Eagleye.[2] The case has become identified in these judicial proceedings as *Eagleye I*.

When the April 4 Complaint was filed, the False Claims Act flatly prohibited the maintenance of any *qui tam* suit based on evidence or information that the government possessed when the action was brought. 31 U.S.C. § 3730(b)(4) (1982). After conducting its review of the Complaint as required by the False Claims Act, in the context of its ongoing investigation then a year and one-half old, the government elected on June 3, 1986, to

---

[2] The two other relators filing the *qui tam* complaint, Russ and Broome, have not joined in Eagleye's petition to this Court.

notice its appearance and to take control of this action as plaintiff. Thereafter, it filed the First Amended Complaint, which made clear that the government was proceeding on the basis of the matters previously disclosed by TRW and investigated by the government.

Shortly after the government filed its notice of appearance, TRW filed a motion to dismiss claims and causes of action that were in relators' original Complaint but not in the government's First Amended Complaint. The purpose of the motion was simple: to clarify that, once the government took over the case, relators lacked any right to proceed on their Complaint, even though the government's First Amended Complaint had, after investigation, dropped most of the specific charges in the relators' Complaint. Instead of resisting TRW's motion, Eagleye, Broome and Russ expressly acknowledged -- consistent with the governing False Claims Act -- that they had no right to continue to proceed against TRW, in a stipulation signed by the parties and the would-be relators (no longer denominated as parties), and entered by the District Court as an Order. (R: 48; Stipulation and Order filed July 31, 1986.) Specifically, paragraph 4 of that Stipulation and Order states:

> "The original complaint shall not be the basis for any further proceedings by relators in this action or for any separate action brought or pursued by relators." (*Id.* at ¶ 4) (*see* Pet. App. 11a).

Also on July 31, 1986, the District Court stayed the matter until a concurrent criminal investigation could be concluded. (R: 46.) During the stay, TRW (consistent with its policy of accepting responsibility) began payments on its multi-million-dollar commitment to restitution and pleaded guilty to three counts of conspiracy to defraud -- counts relating to conduct that TRW itself had fully disclosed four years before the government's investigation was completed, and well over a year before relators filed their Complaint. After the stay was lifted in February 1989, the District Court granted the government's motion to dismiss from *Eagleye I* all three would-be relators. (Pet. App. 40a-51a).

Petitioner filed another Complaint under seal on August 12, 1987, subsequent to the 1986 amendments to the False Claims Act. *United States ex rel. Eagleye v. TRW Inc., et al.*, Case No. C87-2088 (N.D. Ohio, Aug. 12, 1987) ("*Eagleye II*"). Even before the Complaint in *Eagleye II* was unsealed, the government moved to dismiss on the grounds that the Complaint did not set forth any allegations not already addressed in *Eagleye I* and that, under the *qui tam* provisions of the False Claims Act in place at the time of the violation, relators could not maintain *Eagleye II*. The District Court dismissed *Eagleye II* on November 30, 1990. (Pet. App. 32a-36a). The District Court certified its ruling in *Eagleye I* as a Final Judgment pursuant to Rule 54(b), Federal Rules of Civil Procedure.

The three putative relators appealed both cases to the Sixth Circuit Court of Appeals, which, on August 23, 1993, affirmed. The Court of Appeals considered two issues: first, whether the District Court correctly ruled that the 1986[3] and 1988[4] amendments to the False Claims Act did not apply retroactively to relators' *qui tam* action based on conduct occurring and ceasing before adoption of the amendments; and, second, whether the District Court correctly determined that the relators were not entitled to any bounty-hunter recovery under the 1982 provisions of the False Claims Act. (Pet. App. 7a-8a).

The Court of Appeals resolved the first issue by concluding that the 1986 and 1988 amendments could not be applied retroactively to conduct occurring before their adoption. The Court considered but rejected relators' reliance on *Bradley v. Richmond School Board*, 416 U.S. 696 (1974). The Court of Appeals was guided by this Court's more recent analysis in *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988), that "[r]etroactivity is not favored in the law" and "congressional enactments and administrative rules will not be

---

[3] Pub. L. No. 99-562, 100 Stat. 3154 (1986).

[4] Pub. L. No. 100-700, 102 Stat. 4638 (1988).

construed to have retroactive effect unless their language requires this result." The Court of Appeals then concluded, consistent with its previous decisions in *Boddie v. American Broadcasting Co.*, 881 F.2d 267 (6th Cir. 1989), *cert. denied*, 493 U.S. 1028 (1990), and *United States v. Murphy*, 937 F.2d 1032 (6th Cir. 1991), that *Bradley* represented a narrow exception to the general principle that statutes operate only prospectively, a notion "familiar to every law student." *Boddie*, 881 F.2d at 269-70 (citation omitted). The Court of Appeals determined that there was no clear language evidencing an intent for retroactive application and that the amendments involved "substantive rights." It concluded finally that the amendments did not come within *Bradley*'s narrow exception, that they were not applicable in this case, and that the False Claims Act as it read in 1982 applied. (Pet. App. 17a-18a).

As to the second issue, the Court of Appeals determined that, under the False Claims Act as it existed in 1982, the District Court properly dismissed the relators in *Eagleye I* and the action in *Eagleye II*. In reaching that decision, the Court rejected the government's jurisdictional argument that the relators should have been dismissed because their claims were based on information possessed by the government at the time the action was filed, under Sections 3730(b)(4) and (c)(1). Instead, the Court was satisfied that the District Court had not based its decision on the jurisdictional ground cited by the government but had applied a summary judgment standard to determine that relators were not entitled to a reasonable informer's fee under Section 3730(c)(1). The Court determined, under that standard, that relators had failed to present any evidence to refute the government's evidence establishing that it was aware of the challenged conduct, based on two reports voluntarily disclosed by TRW in November 1984 and February 1985, before the relators filed their *qui tam* actions. It concluded therefore that the District Court was correct as a matter of law in determining relators to be ineligible to receive an informer's fee. (Pet. App. 21a-23a).

ARGUMENT

The Petition raises no significant issues of law and no conflict among the circuits warranting this Court's review. The petition presents matters that, *inter alia*, (1) are predicated upon misconceptions as to the *factual* bases of the Court of Appeals' decision; (2) misconstrue the *legal* bases for that decision; (3) involve agreement, not disagreement, between the Circuits; and (4) can have no impact on Petitioner's ultimate claims and could potentially affect only a very narrow range of other possible cases. For these reasons, the petition for writ of certiorari does not present matters appropriate for invocation of this Court's discretionary jurisdiction and the writ should be denied.

The setting and posture of this case make it an unsatisfactory candidate for review even if relator Eagleye had raised any significant points of law of general applicability. Extricating justice from the mire of relators' misconduct and muddy procedures, both the District Court and the Court of Appeals determined that relators had not demonstrated any legitimate basis for sharing in any proceeds that the government may receive as a result of the problems caused by relators and voluntarily disclosed to the government by defendant TRW. Equity alone supports the decisions below: relator Eagleye should not receive a windfall recovery resulting from his own illegal conduct unless that result is absolutely compelled by the law, which it is not.

A. Petitioner's First Question Was Not Passed Upon By The Court Of Appeals.

Petitioner Eagleye's first question presents an evidentiary question of no constitutional significance: whether the District Court erred when it allegedly considered and relied upon a sealed affidavit of an assistant U.S. attorney in the proceedings leading to dismissal of the relators' claims for an informant's bounty. In short, even though the Court of Appeals did not even consider the affidavit, Petitioner Eagleye seems to contend that this Court should review a District Court determination to allow an affidavit submitted by one party to become part of the record.

While petitioner contends that the affidavit in question should not have been admitted because he had no right to contest its veracity, he fails to show how the District Court's procedure raises any question of general import, much less constitutional significance. He also fails to show how, if the District Court had ruled differently and not accepted the affidavit as part of the record, the decision of the Court of Appeals would have been different. That latter showing cannot, of course, be made. The Court of Appeals did not consider the Stickan affidavit in reviewing *de novo* the District Court's summary judgment dismissing the relators. Rather, reviewing the evidence most favorably to the relators, the Court of Appeals determined that the government had presented sufficient evidence -- without regard to the challenged affidavit -- to support the government's contention that it had knowledge of the challenged conduct prior to relators' *qui tam* complaint. (Pet. App. 22a). The Court of Appeals also concluded that the relators, including Petitioner Eagleye, had failed to present any evidence to raise any genuine issue of material fact to support their claim to a bounty. (*Id.*)

There is no basis at all for this Court to review that sound judgment. *See, e.g., J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 568 (1981) ("We do not ordinarily address for the first time in this Court an issue which the Court of Appeals has not addressed. . ."). Moreover, even if this Court were to accept Petitioner's first, case specific, procedural question, no difference in outcome could result from full review because the challenged affidavit was not part of the evidence relied upon by the Sixth Circuit to review *de novo* and to affirm the propriety of the District Court's summary judgment.

B. Petitioner's Second Question Was Decided By The Court Of Appeals In Petitioner's Favor.

The second question presented by Petitioner leaves nothing for review by this Court. Petitioner Eagleye questions whether the "jurisdictional bar" of 31 U.S.C. § 3730(b)(4) (1982) was appropriate for the District Court to apply in determining whether a relator is entitled to an informant's fee in a case in which the

government takes over the prosecution. However, neither the District Court nor the Court of Appeals based its decision on that section, which applies only when the government declines to take over the case. Indeed, the Court of Appeals expressly rejected the government's argument contending that the section should be applied. (Pet. App. 20a). Thus, a decision in Petitioner's favor on this issue will not change the result reached by the Court of Appeals; there is nothing for this Court to review.

C. Petitioner's Third Question Involves No Conflict Among The Circuits.

The final issue raised by petitioner Eagleye is whether the 1986 (and 1988) amendments to the False Claims Act can be applied to conduct that occurred prior to their enactment. Petitioner is obviously eager to have the amendments applied -- among other things, they increased the statutory penalties, increased the potential multiple against actual damages from double to treble, and increased the percentage sharing available to certain relators. In addition, they allow bounty participation to a relator based on contribution to the prosecution rather than on timing of disclosure, the standard applicable when Petitioner made his disclosures. However, again Petitioner has shown no reason why that issue should be reviewed by this Court in this particular case.

The Sixth Circuit Court of Appeals is the first appellate court to decide whether the 1986 amendments to the False Claims Act affected substantive rights and liabilities, so that they could not be applied to conduct that occurred prior to the amendments' adoption. In *United States v. Murphy*, 937 F.2d at 1038, the Court held that they did affect substantive rights and liabilities and could not be retroactively applied. While decisions of various district courts are in conflict over the retroactivity issue,[5] the only other appellate court to have addressed the issue to date is the Court of Appeals for the First Circuit. That court -- like the

---

[5] *Compare, e.g., United States v. Hill*, 676 F. Supp. 1158 (N.D. Fla. 1987), *with United States v. Bekhrad*, 672 F. Supp. 1529 (S.D. Iowa 1987).

Sixth Circuit -- also concluded that the 1986 amendments may not be retroactively applied to conduct occurring before their adoption. *United States v. Data Translation, Inc.*, 984 F.2d 1256, 1266 (1st Cir. 1992).

Thus, there is no conflict among the circuits with respect to the retroactivity question that needs to be resolved by a decision of this Court, particularly on the muddied record presented in this case. Moreover, the decision of the Sixth Circuit Court of Appeals to deny retroactive application was consistent with the many decisions of this Court decided subsequent to the decision in *Bradley v. Richmond Board of Education*, 416 U.S. 696, the sole decision on which petitioner Eagleye relies. *E.g.*, *Bowen v. Georgetown University Hospital*, 488 U.S. at 208.

Once again, moreover, any decision by this Court, even if this issue were accepted for review, would not change the end result. If the Court determined that the 1986 amendments were not to be retroactively applied to conduct occurring before their adoption, the decision below would be affirmed. On the other hand, if this Court were to decide that the amendments are retroactive, that principle would also make applicable the 1988 amendments that bar recovery to Eagleye because of his criminal involvement and guilty plea. *United States v. Eagleye*, Crim. Action No. CR88-117 (N.D. Ohio, July 28, 1988). Moreover, Petitioner Eagleye fails to mention in his petition a stipulation entered into in 1986, prior to the amendments, which precludes the relators from litigating the issues in any case other than the government's proceeding in *Eagleye I*. Because of that stipulation, relator Eagleye is barred from prosecuting *Eagleye II* as well as *Eagleye I*. (*See* Pet. App. 11a).

CONCLUSION

For the reasons stated above, TRW respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Of Counsel:
JOHN W. CHIERICHELLA
FRIED, FRANK, HARRIS,
SHRIVER AND JACOBSON
1001 Pennsylvania Avenue
Suite 800
Washington, D.C. 20004
(202) 639-7000

SUSAN Z. HALLER
PATRICIA A. DUNN
(Counsel of Record)
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

GERALD W. PALMER
JONES, DAY, REAVIS & POGUE
555 West 5th Street
Suite 4600
Los Angeles, CA 92714
(714) 851-3939

Counsel for Respondent
TRW Inc.

February 18, 1994